

## **2011 DRAFTING REQUEST**

### **Bill**

Received: **11/04/2011**

Received By: **pgrant**

Wanted: **As time permits**

Companion to LRB:

For: **Sandy Pasch (608) 266-7671**

By/Representing: **Fred Ludwig**

May Contact:

Drafter: **pgrant**

Subject: **Education - miscellaneous**  
**Education - school boards**

Addl. Drafters:

Extra Copies: **TKK**

Submit via email: **YES**

Requester's email: **Rep.Pasch@legis.wisconsin.gov**

Carbon copy (CC:) to:

---

### **Pre Topic:**

No specific pre topic given

---

### **Topic:**

Written policies on use of epinephrine auto-injectors by pupils

---

### **Instructions:**

See attached

---

### **Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	pgrant 11/10/2011			_____			
/1	pgrant 12/22/2011	mduchek 11/14/2011	phenry 11/14/2011	_____	mbarman 11/14/2011		
		mduchek 12/23/2011		_____			
/2	pgrant 01/09/2012	mduchek 01/13/2012	jmurphy 01/03/2012	_____	sbasford 01/03/2012		

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
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/3

jmurphy \_\_\_\_\_  
01/18/2012 \_\_\_\_\_

mbarman  
01/18/2012

ggodwin  
01/27/2012

FE Sent For:

<END>

↳ Not  
Needed

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Vers.      Drafted      Reviewed      Typed      Proofed      Submitted      Jacketed      Required

/3

jmurphy	_____	mbarman
01/18/2012	_____	01/18/2012

FE Sent For:

<END>

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/2			jmurphy 01/03/2012		sbasford 01/03/2012		

1/17/12

1/17/12

Vers.      Drafted      Reviewed      Typed      Proofed      Submitted      Jacketed      Required

FE Sent For:

WD  
1/13/12  
13  
1/17/12

<END>

## 2011 DRAFTING REQUEST

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Wanted: As time permits

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/?	pgrant 11/10/2011						
/1		mduchek 11/14/2011	phenry 11/14/2011		mbarman 11/14/2011		

FE Sent For:

*[Handwritten signatures and dates]*  
12/23/11 12/27 12/31/12  
12  
<END>

## Bill

13 **<END>**



**Grant, Peter**

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**From:** Ludwig, Frederic  
**Sent:** Friday, November 04, 2011 11:20 AM  
**To:** Grant, Peter  
**Subject:** FW: LRB 11a1990 Topic: Epinephrine auto-injectors  
**Attachments:** LRB a1990\_2

Hi Peter,

Is there anyway to draft this as a standalone bill assuming that SB 204 will soon be signed into law? Or will we have to wait until it is actually is signed? Haven't encountered a request from my boss like this, so let me know when you get a chance.

Fred

---

**From:** LRB.Legal  
**Sent:** Thursday, November 03, 2011 4:38 PM  
**To:** Rep.Pasch  
**Subject:** LRB 11a1990 Topic: Epinephrine auto-injectors

The attached proposal has been jacketed for introduction.

A copy has also been sent to:



11a19902.pdf (25  
KB)

**BILL**

Date (time)  
needed

500N

LRB - 34251/1

PG : med & jf

Use the appropriate components and routines developed for bills.

AN ACT... [generate catalog] **to repeal . . . ; to renumber . . . ; to consolidate and renumber . . . ; to renumber and amend . . . ; to consolidate, renumber and amend . . . ; to amend . . . ; to repeal and recreate . . . ; and to create . . .** of the statutes; **relating to:** ...requiring each public, private, and tribal school to adopt a policy on a pupil's possession and use of an epinephrine auto-injector.

[NOTE: See section 4.02 (2) (br), Drafting Manual, for specific order of standard phrases.]

*Analysis by the Legislative Reference Bureau*

If titles are needed in the analysis, in the component bar:

For the main heading, execute: ..... **create → anal: → title: → head**

For the subheading, execute: ..... **create → anal: → title: → sub**

For the sub-subheading, execute: ..... **create → anal: → title: → sub-sub**

For the analysis text, in the component bar:

For the text paragraph, execute: ..... **create → anal: → text**

(att'd)

**The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:**

SECTION #.

CR;

118.192(1v)

118.292(1v)



State of Wisconsin  
2011 - 2012 LEGISLATURE



LRBa1990/2  
PG:kjf:ph

ASSEMBLY AMENDMENT,  
TO 2011 SENATE BILL 204

(18.192) 118.292


1 At the locations indicated, amend the bill as follows:

2 1. Page 2, line 19: after that line insert:

3 (1v) The school shall adopt a written policy describing the procedure for a  
4 pupil's possession and use of an epinephrine auto-injector under sub. (1r). The policy  
5 shall <sup>require school staff to do</sup> include all of the following:

6 (a) ~~A requirement that school personnel~~ <sup>= must</sup> inform the pupil that if he or she uses  
7 the epinephrine auto-injector, he or she ~~shall~~ <sup>must</sup> notify school ~~personnel~~ <sup>staff</sup> as soon as  
8 possible.

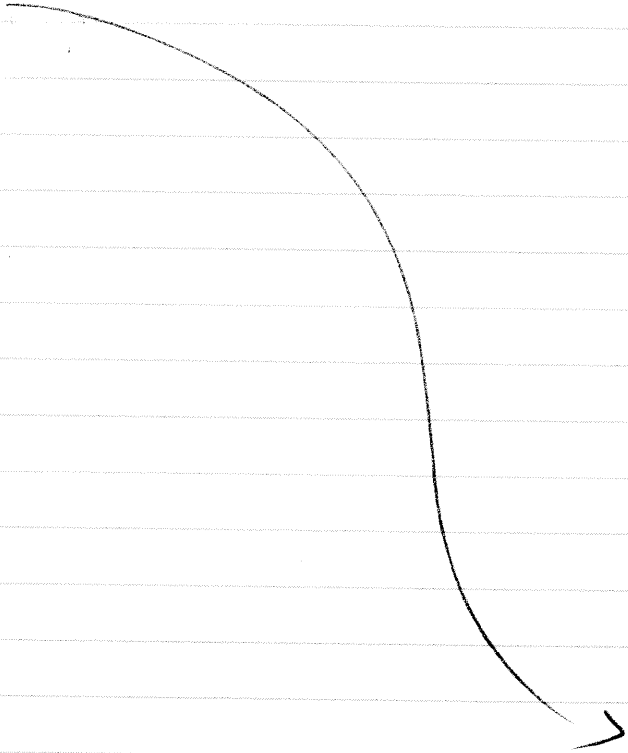
9 (b) ~~A requirement that~~ <sup>staff</sup> if the pupil notifies school ~~personnel~~ <sup>staff</sup> under par. (a),  
10 ~~school personnel shall~~ report the pupil's use of the epinephrine auto-injector by  
11 dialing the telephone number "911" or, in an area in which the telephone number

1 "911" is not available, the telephone number for an emergency medical service  
2 provider." 

3 (END)

ANALYSIS

4/ 2011 Senate Bill 204, allowing certain pupils to possess and use an epinephrine auto-injector, passed both houses of the legislature and was enrolled on November 9, 2011. Should it become law, it would permit





State of Wisconsin  
2011 - 2012 LEGISLATURE



LRB-2878/1

PG:kjfrs

## 2011 SENATE BILL 204

September 27, 2011 - Introduced by Senators GALLOWAY, HARSDORF, SCHULTZ, COWLES, MOULTON, VINEHOUT and TAYLOR, cosponsored by Representatives STRACHOTA, SEVERSON, PRIDEMORE, PERRYK, JACQUE, STEINEKE, KAUFERT, BROOKS, RIPP, BIES, BALLWEG, RIVARD, MARKLEIN, ENDSLEY, MOLEPSKE JR and BEWLEY. Referred to Committee on Public Health, Human Services, and Revenue.

1 AN ACT to amend 119.04 (1); and to create 118.292 of the statutes; relating to:  
2 allowing certain pupils to possess and use an epinephrine auto-injector.

a public, private, or tribal

### Analysis by the Legislative Reference Bureau

~~This bill permits~~ a pupil, while in school, at a school-sponsored activity, or under the supervision of a school authority, to possess and use an epinephrine auto-injector if the pupil uses the injector to prevent the onset or alleviate the symptoms of an emergency situation. An emergency situation is a situation in which a pupil reasonably believes that he or she is experiencing a severe allergic reaction, including anaphylaxis, that requires the administration of epinephrine to avoid severe injury or death.

must  
~~The bill requires~~ the pupil <sup>must</sup> to obtain the written approval of the pupil's physician and, if the pupil is a minor, the written approval of the pupil's parent or guardian, and to provide the school principal with a copy of the approval or approvals. Finally, ~~no public, private, or tribal school, public, private, or tribal school employee, or school district or school board is civilly liable for an injury incurred by a pupil as a result of using an epinephrine auto-injector or by a person as a result of a pupil possessing or using an epinephrine auto-injector.~~

A →  
*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

3 SECTION 1. 118.292 of the statutes is created to read:

A

¶ This bill requires each school to adopt a written policy describing the procedure for a pupil's possession and use of an epinephrine auto-injector. The policy must <sup>that school staff do</sup> require the following:

~~A requirement that school personnel~~

¶ 1. Inform the pupil that if <sup>he or she</sup> uses <sup>an</sup> an epinephrine auto-injector, he or she must notify school staff as soon as possible.

2. If the pupil notifies school staff, ~~school personnel must~~ report the pupil's use of the epinephrine auto-injector by dialing <sup>dialing</sup> "911."

# State of Wisconsin



2011 Senate Bill 204

Date of enactment: November 23, 2011

Date of publication\*: December 8, 2011

## 2011 WISCONSIN ACT 85

AN ACT to amend 119.04 (1); and to create 118.292 of the statutes; relating to: allowing certain pupils to possess and use an epinephrine auto-injector.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

SECTION 1. 118.292 of the statutes is created to read:

**118.292 Possession and use of epinephrine auto-injectors.** (1g) In this section:

(a) "Emergency situation" means a situation in which a pupil reasonably believes that he or she is experiencing a severe allergic reaction, including anaphylaxis, that requires the administration of epinephrine to avoid severe injury or death.

(b) "Epinephrine auto-injector" means a device used for the automatic injection of epinephrine into the human body to prevent or treat a life-threatening allergic reaction.

(c) "School" includes a public, private, and tribal school.

(1r) While in school, at a school-sponsored activity or under the supervision of a school authority, a pupil may possess and use an epinephrine auto-injector if all of the following are true:

(a) The pupil uses the epinephrine auto-injector to prevent the onset or alleviate the symptoms of an emergency situation.

(b) The pupil has the written approval of the pupil's physician and, if the pupil is a minor, the written approval of the pupil's parent or guardian.

(c) The pupil has provided the school principal with a copy of the approval or approvals under par. (b).

(2) No school board, school district, private school, or tribal school, or any employee of the foregoing, is civilly liable for an injury incurred by any of the following:

(a) A pupil as a result of using an epinephrine auto-injector under sub. (1r).

(b) Any person as a result of a pupil possessing or using an epinephrine auto-injector under sub. (1r).

SECTION 2. 119.04 (1) of the statutes, as affected by 2011 Wisconsin Acts 10 and 32, is amended to read:

119.04 (1) Subchapters IV, V and VII of ch. 115, ch. 121 and ss. 66.0235 (3) (c), 66.0603 (1m) to (3), 115.01 (1) and (2), 115.28, 115.31, 115.33, 115.34, 115.343, 115.345, 115.365 (3), 115.38 (2), 115.445, 118.001 to 118.04, 118.045, 118.06, 118.07, 118.075, 118.076, 118.10, 118.12, 118.125 to 118.14, 118.145 (4), 118.15, 118.153, 118.16, 118.162, 118.163, 118.164, 118.18, 118.19, 118.20, 118.223, 118.225, 118.24 (1), (2) (c) to (f), (6), (8), and (10), 118.245, 118.255, 118.258, 118.291, 118.292, 118.30 to 118.43, 118.46, 118.51, 118.52, 118.55, 120.12 (4m), (5), and (15) to (27), 120.125, 120.13 (1), (2) (b) to (g), (3), (14), (17) to (19), (26), (34), (35), (37), (37m), and (38), 120.14, 120.21 (3), and 120.25 are applicable to a 1st class city school district and board.

\* Section 991.11, WISCONSIN STATUTES 2009-10: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].



**Grant, Peter**

---

**From:** Ludwig, Frederic  
**Sent:** Thursday, December 22, 2011 9:55 AM  
**To:** Grant, Peter  
**Subject:** RE: LRB 3425 - epipen draft

Sorry...I must have missed actually making the request (been a more hectic December than I anticipated/hoped...)

Please do.

Thanks,  
Fred

---

**From:** Grant, Peter  
**Sent:** Thursday, December 22, 2011 9:53 AM  
**To:** Ludwig, Frederic  
**Subject:** FW: LRB 3425 - epipen draft

Fred, did you want me to go ahead with the redraft of LRB-3425 as outlined below?

Peter

---

**From:** Grant, Peter  
**Sent:** Monday, December 05, 2011 4:23 PM  
**To:** Ludwig, Frederic  
**Cc:** Larson, Brian  
**Subject:** RE: LRB 3425 - epipen draft

We can do that, Fred. What that would mean is that the only substantive change to LRB-3425 would be adding to subsection (2), as created by Act 85, a new paragraph reading something like this:

(2) (c) Any person as a result of an act or omission under sub. (1v) [which is created in LRB-3425] unless the act or omission was done with actual malice or constituted gross negligence or reckless, wanton, or intentional misconduct.

This is the language that's used in 118.125 (2) (d). I was just pointing out in my earlier email that Act 85 includes *no* carve-outs in its liability exemption language. This provision would add a carve-out in that same statutory section and I'm sure someone will question why there's a difference.

The other change I'd like to make to -3425 is to substitute "employees" for "staff" on page 2, line 4. "Employee" is the term used in Act 85; see 118.292 (2) (intro.).

Peter

---

**From:** Ludwig, Frederic  
**Sent:** Monday, December 05, 2011 3:59 PM  
**To:** Grant, Peter  
**Cc:** Larson, Brian  
**Subject:** RE: LRB 3425 - epipen draft

Sandy doesn't want to reinvent the wheel here, so I think the carve-outs in 118.125(2)(d) would be sufficient –

12/22/2011

risk of exposure?

Is the teacher and food service staff trained to recognize a food allergy?

These are all accommodation that might be listed in a nurse's emergency action plan or the school district Section 504 plan.

---

**From:** Larson, Brian  
**Sent:** Thursday, December 01, 2011 5:05 PM  
**To:** Ludwig, Frederic  
**Cc:** Grant, Peter  
**Subject:** RE: LRB 3425 - epipen draft

Fred --

With you in MKE, I am not sure if you and Peter have had a chance to discuss the points below yet. But I just wanted to throw in my two cents regarding the waiver of liability language.

The language below would offer protection from liability as a result of nondisclosure of the information. That is probably desired in this case, but that's up to you. In addition, I think the idea was also to give the school protection from liability as a result of a failure to call "911" (perhaps with carve-outs in the event of negligence, etc.).

Brian T. Larson  
Staff Attorney  
Wisconsin Legislative Council  
(608) 266-0680

---

**From:** Grant, Peter  
**Sent:** Thursday, December 01, 2011 11:26 AM  
**To:** Ludwig, Frederic; Larson, Brian  
**Subject:** RE: LRB 3425 - epipen draft

Fred, one more thing that I just realized:

Sec. 118.125 (2) (d) currently requires that pupil records be made available to persons employed by the school district which the pupil attends who are required by DPI to hold a license and to other school officials who have been determined by the school board to have legitimate educational interests, including safety interests, in the pupil records. (I believe that this mimics federal law.) State law goes on to state:

A school board member or an employee of a school district may not be held personally liable for any damages caused by the nondisclosure of any information specified in this paragraph unless the member or employee acted with actual malice in failing to disclose the information. A school district may not be held liable for any damages caused by the nondisclosure of any information specified in this paragraph unless the school district or its agent acted with gross negligence or with reckless, wanton, or intentional misconduct in failing to disclose the information.

Does this satisfy some or all of your concerns, both with respect to making the list available as well as the liability issue?

Peter

---

**From:** Ludwig, Frederic  
**Sent:** Thursday, December 01, 2011 10:21 AM  
**To:** Larson, Brian

12/22/2011

unless I'm missing something from the string of emails below...?

---

**From:** Grant, Peter  
**Sent:** Friday, December 02, 2011 1:34 PM  
**To:** Ludwig, Frederic  
**Cc:** Larson, Brian  
**Subject:** RE: LRB 3425 - epipen draft

Hi Fred,

In answer to your question, yes. I think all you might need at this point is Brian's suggestion regarding liability. And, as he suggests, perhaps some carve-outs. But what should the carve-outs be? Note that there aren't any in Act 85. However, there are carve-outs in 118.125 (2) (d): "...unless the school district or its agent acted with gross negligence or with reckless, wanton, or intentional misconduct...."

Peter

---

**From:** Ludwig, Frederic  
**Sent:** Friday, December 02, 2011 11:31 AM  
**To:** Larson, Brian  
**Cc:** Grant, Peter  
**Subject:** RE: LRB 3425 - epipen draft

Sorry...scurrying to play catch-up on a number of things I missed yesterday. Does this response from DPI's School Nursing and Health Service Consultants somewhat parallel what the two of you laid out yesterday?

If the school district has a school nurse, he or she would collect information regarding issues that can result health emergencies, such as anaphylaxis to food allergies, from the emergency cards mandated to be collected from parents annually. This process is mandated by Wis. Adm. Code PI 8.01(2)(g) or the emergency nursing services standard. Here is the link to the code: [https://docs.legis.wisconsin.gov/code/admin\\_code/pi/8.pdf](https://docs.legis.wisconsin.gov/code/admin_code/pi/8.pdf)

In Wis. Stat. sec. 118.125(2)(d), a school nurse can share information with school staff who have a legitimate educational and safety interest in the information. This is done without the need for written parental consent. Please see below:

118.125(2)(d) (d) Pupil records shall be made available to persons employed by the school district which the pupil attends who are required by the department under s. 115.28 (7) to hold a license, law enforcement officers who are individually designated by the school board and assigned to the school district, and other school district officials who have been determined by the school board to have legitimate educational interests, including safety interests, in the pupil records. Law enforcement officers' records obtained under s. 938.396 (1) (c) 3. shall be made available as provided in s. 118.127. A school board member or an employee of a school district may not be held personally liable for any damages caused by the nondisclosure of any information specified in this paragraph unless the member or employee acted with actual malice in failing to disclose the information. A school district may not be held liable for any damages caused by the nondisclosure of any information specified in this paragraph unless the school district or its agent acted with gross negligence or with reckless, wanton, or intentional misconduct in failing to disclose the information.

School districts are governed by FERPA and usually not HIPAA. Let me know if you would like more information regarding this issue.

If there is a list of students with food allergies this will be a limited benefit. There needs to be a plan for how the student with food allergies will be managed at school. The plan would address:

- What emergency medications need to be administered in the event the student has an exposure? Who is trained to administer these medications?

- What is the school going to do to minimize the exposure risk?

- Does the child need to eat at a separate table?

- Does the school need to send home a letter with a selective snack and celebration list to avoid

12/22/2011

**Cc:** Grant, Peter; Ludwig, Frederic  
**Subject:** Re: LRB 3425 - epipen draft

I'm in district in MKE all day today, but feel free to call my cell if there's anything you want/need to discuss.

Sent from my iPhone

On Dec 1, 2011, at 10:14 AM, "Larson, Brian" <[Brian.Larson@legis.wisconsin.gov](mailto:Brian.Larson@legis.wisconsin.gov)> wrote:

Peter – I'll give you a call.

Brian T. Larson  
Staff Attorney  
Wisconsin Legislative Council  
(608) 266-0680

---

**From:** Grant, Peter  
**Sent:** Thursday, December 01, 2011 9:56 AM  
**To:** Ludwig, Frederic  
**Cc:** Larson, Brian  
**Subject:** RE: LRB 3425 - epipen draft  
Hi Fred and Brian,  
Do you know where I can find the requirement to have an emergency plan, mentioned in item 1? Is it in federal law?  
Thanks -  
Peter

---

**From:** Ludwig, Frederic  
**Sent:** Wednesday, November 30, 2011 4:40 PM  
**To:** Grant, Peter  
**Cc:** Larson, Brian  
**Subject:** LRB 3425 - epipen draft

Hi Peter,  
First off, thanks for getting this draft together. Sandy is greatly appreciative.  
That being said, we've had a little more time to chew on some additional issues and wanted to run them by you for a /2.

1. Under SB 204, any student who carries an epipen at school must provide the school with a copy of written approval from their physician and/or parent/guardian. Sandy wants to build upon this and include a provision which would require the school to readily maintain a list of these students (just that they have an epipen on premises – no further medical information), as well as providing a student's emergency plan to any school personnel who interact with students carrying epipens. This would be on a need-to-know basis with staff who have been "ok'd" on a student's consent form. We shot the idea around to some school nurses, knowing there may be some complexities with HIPAA and FERPA.

It is our understanding that in most cases, students with an epipen must have an emergency plan that is developed with a guardian and medical provider. On the emergency plan, there is typically a place for the parent signature, as well as an area that indicated whom the plan may be distributed to (i.e. consent form within the plan). Copies of the plan are given to those individuals, along with instruction for administration of the epipen (skill sheet, epipen trainer, agreement to delegation form, etc.).

Sandy would like to find a way to incorporate these basic principles as a (1v)(c)

1. After discussing with Leg Council (Brian Larson, who I've included on the email), we thought it would be worth attaching liability wavier language under 1(v). We thought current s. 118.29 (3) would work best, which reads:

"Subject to sub. (4m), is immune from civil liability for his or her acts or omissions in administering a nonprescription drug product or prescription drug to a pupil under subd. 1., 2., 2m., or 2r. unless the act is in violation of sub. (6) or the act or omission constitutes a high degree of negligence. This subdivision does not apply to health care professionals." However, Brian thought that simply adding "1(v)" to the list under 118.29(3) will not work, and that some verbiage like "...under subd. 1, 2., 2m., or 2r, or in meeting its obligations under 1(v), unless the act..." would need to be added as well.

I hope these points somewhat make sense, but let me know if you'd like any clarification/would like to discuss further. If needed, I know Brian would be more than happy to join the conversation as well.

Thanks,  
Fred

--

**Fred Ludwig**

**Office of State Representative Sandy Pasch**

608.266.7671 *p*

888.534.0022 *tf*

608.282.3622 *f*



State of Wisconsin  
2011 - 2012 LEGISLATURE



LRB-3425/1

PG:med&kjf:ph

stays

2011 BILL

1 AN ACT *to create* 118.292 (1v) of the statutes; **relating to:** ~~requiring each public,~~  
2 ~~private, and tribal school to adopt a policy on~~ a pupil's possession and use of an  
3 epinephrine auto-injector.

under current law, a  
pupil may

**Analysis by the Legislative Reference Bureau**

~~2011 Senate Bill 204, allowing certain pupils to possess and use an epinephrine auto-injector, passed both houses of the legislature and was enrolled on November 8, 2011. Should it become law, it would permit a pupil, while in a public, private, or tribal school, at a school-sponsored activity, or under the supervision of a school authority, to possess and use an epinephrine auto-injector if the pupil uses the injector to prevent the onset or alleviate the symptoms of an emergency situation. An emergency situation is a situation in which a pupil reasonably believes that he or she is experiencing a severe allergic reaction, including anaphylaxis, that requires the administration of epinephrine to avoid severe injury or death.~~

The pupil must obtain the written approval of the pupil's physician and, if the pupil is a minor, the written approval of the pupil's parent or guardian, and must provide the school principal with a copy of the approval or approvals.

This bill requires each school to adopt a written policy describing the procedure for a pupil's possession and use of an epinephrine auto-injector. The policy must require that school ~~staff~~ do the following:

1. Inform the pupil that if or she uses an epinephrine auto-injector, he or she must notify school ~~staff~~ as soon as possible.

the governing body of employees

employees

he

## BILL

2. If the pupil notifies <sup>a</sup> school ~~staff~~ <sup>employee</sup>, report the pupil's use of the epinephrine auto-injector by dialing "911."

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

SECTION 1. 118.292 (1v) of the statutes is created to read:

118.292 (1v) The <sup>governing body of each</sup> school shall adopt a written policy describing the procedure for a pupil's possession and use of an epinephrine auto-injector under sub. (1r). The policy shall require school <sup>employees to</sup> ~~staff~~ do all of the following:

(a) Inform the pupil that if he or she uses the epinephrine auto-injector, he or she must notify <sup>a</sup> school <sup>employee</sup> ~~staff~~ as soon as possible.

(b) If the pupil notifies <sup>a</sup> school <sup>employee</sup> ~~staff~~ under par. (a), report the pupil's use of the epinephrine auto-injector by dialing the telephone number "911" or, in an area in which the telephone number "911" is not available, the telephone number for an emergency medical service provider.

~~END~~

SEC. # CR, 118.292 (2)(c)

118.292 (2) (a) Any person as a result of <sup>an</sup> act or omission under sub. (1v) unless the act or omission ~~constituted~~ was done with actual malice or ~~constituted~~ gross negligence or reckless ~~or~~ wanton or intentional misconduct.

(End)



(A)

¶ The bill also exempts ~~any person~~<sup>person</sup> or school boards and districts, private schools, and tribal schools, and their employees, from civil liability for an injury incurred by any person as a result of performing or failing to perform any act described above unless the act or failure was done with actual malice or constituted gross negligence or reckless, wanton, or intentional misconduct.

## Grant, Peter

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**From:** Ludwig, Frederic  
**Sent:** Monday, January 09, 2012 4:38 PM  
**To:** Grant, Peter  
**Subject:** RE: LRB 3425 - epipen draft

Leg Council suggested this as an alternative in order to truly make the bill language and current statute as consistent as possible:

**"Any person as a result of an act or omission under sub. (1v) unless the act or omission constitutes a high degree of negligence. This paragraph does not apply to health care professionals."**

Does that make sense? Or do you think your suggestion works better? I'm knee deep in mining right now, so I unfortunately can't dedicate too much brain power to this at the moment...

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**From:** Grant, Peter  
**Sent:** Monday, January 09, 2012 9:04 AM  
**To:** Ludwig, Frederic  
**Subject:** RE: LRB 3425 - epipen draft

Hi Fred,

Just to make sure I understand your request: you want to change page 2, lines 13 to 15 of 3425/2 so it reads "Any person as a result of an act or omission under sub. (1v) unless the act or omission constitutes a high degree of negligence." Correct?

Peter

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**From:** Ludwig, Frederic  
**Sent:** Friday, January 06, 2012 5:04 PM  
**To:** Grant, Peter  
**Subject:** RE: LRB 3425 - epipen draft

Hi Peter,

One small change, and I think we'll be 100% set.

As drafted, there would be two different non-liability standards (i.e., Section 2 of the bill vs. existing s. 118.29(2)(a) (3)) for non-liability. We'd like to include the same standard in Section 2 that would apply under a 118.29(2)(a) (2m) situation.

Make sense? If not, let me know. If so, thanks for getting this last change together.

Fred

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**From:** Grant, Peter  
**Sent:** Thursday, December 22, 2011 9:53 AM  
**To:** Ludwig, Frederic  
**Subject:** FW: LRB 3425 - epipen draft

Fred, did you want me to go ahead with the redraft of LRB-3425 as outlined below?

Peter

1/9/2012

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**From:** Grant, Peter  
**Sent:** Monday, December 05, 2011 4:23 PM  
**To:** Ludwig, Frederic  
**Cc:** Larson, Brian  
**Subject:** RE: LRB 3425 - epipen draft

We can do that, Fred. What that would mean is that the only substantive change to LRB-3425 would be adding to subsection (2), as created by Act 85, a new paragraph reading something like this:

(2) (c) Any person as a result of an act or omission under sub. (1v) [which is created in LRB-3425] unless the act or omission was done with actual malice or constituted gross negligence or reckless, wanton, or intentional misconduct.

This is the language that's used in 118.125 (2) (d). I was just pointing out in my earlier email that Act 85 includes *no* carve-outs in its liability exemption language. This provision would add a carve-out in that same statutory section and I'm sure someone will question why there's a difference.

The other change I'd like to make to -3425 is to substitute "employees" for "staff" on page 2, line 4. "Employee" is the term used in Act 85; see 118.292 (2) (intro.).

Peter

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**From:** Ludwig, Frederic  
**Sent:** Monday, December 05, 2011 3:59 PM  
**To:** Grant, Peter  
**Cc:** Larson, Brian  
**Subject:** RE: LRB 3425 - epipen draft

Sandy doesn't want to reinvent the wheel here, so I think the carve-outs in 118.125(2)(d) would be sufficient – unless I'm missing something from the string of emails below...?

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**From:** Grant, Peter  
**Sent:** Friday, December 02, 2011 1:34 PM  
**To:** Ludwig, Frederic  
**Cc:** Larson, Brian  
**Subject:** RE: LRB 3425 - epipen draft

Hi Fred,

In answer to your question, yes. I think all you might need at this point is Brian's suggestion regarding liability. And, as he suggests, perhaps some carve-outs. But what should the carve-outs be? Note that there aren't any in Act 85. However, there are carve-outs in 118.125 (2) (d): "...unless the school district or its agent acted with gross negligence or with reckless, wanton, or intentional misconduct...."

Peter

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**From:** Ludwig, Frederic  
**Sent:** Friday, December 02, 2011 11:31 AM  
**To:** Larson, Brian  
**Cc:** Grant, Peter  
**Subject:** RE: LRB 3425 - epipen draft

Sorry...scurrying to play catch-up on a number of things I missed yesterday. Does this response from DPI's

1/9/2012

School Nursing and Health Service Consultants somewhat parallel what the two of you laid out yesterday?

If the school district has a school nurse, he or she would collect information regarding issues that can result health emergencies, such as anaphylaxis to food allergies, from the emergency cards mandated to be collected from parents annually. This process is mandated by Wis. Adm. Code PI 8.01(2)(g) or the emergency nursing services standard. Here is the link to the code: [https://docs.legis.wisconsin.gov/code/admin\\_code/pi/8.pdf](https://docs.legis.wisconsin.gov/code/admin_code/pi/8.pdf)

In Wis. Stat. sec. 118.125(2)(d), a school nurse can share information with school staff who have a legitimate educational and safety interest in the information. This is done without the need for written parental consent. Please see below:

**118.125(2)(d) (d)** Pupil records shall be made available to persons employed by the school district which the pupil attends who are required by the department under s. 115.28 (7) to hold a license, law enforcement officers who are individually designated by the school board and assigned to the school district, and other school district officials who have been determined by the school board to have legitimate educational interests, including safety interests, in the pupil records. Law enforcement officers' records obtained under s. 938.396 (1) (c) 3, shall be made available as provided in s. 118.127. A school board member or an employee of a school district may not be held personally liable for any damages caused by the nondisclosure of any information specified in this paragraph unless the member or employee acted with actual malice in failing to disclose the information. A school district may not be held liable for any damages caused by the nondisclosure of any information specified in this paragraph unless the school district or its agent acted with gross negligence or with reckless, wanton, or intentional misconduct in failing to disclose the information.

School districts are governed by FERPA and usually not HIPAA. Let me know if you would like more information regarding this issue.

If there is a list of students with food allergies this will be a limited benefit. There needs to be a plan for how the student with food allergies will be managed at school. The plan would address:

- What emergency medications need to be administered in the event the student has an exposure? Who is trained to administer these medications?

- What is the school going to do to minimize the exposure risk?

- Does the child need to eat at a separate table?

- Does the school need to send home a letter with a selective snack and celebration list to avoid risk of exposure?

- Is the teacher and food service staff trained to recognize a food allergy?

These are all accommodation that might be listed in a nurse's emergency action plan or the school district Section 504 plan.

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**From:** Larson, Brian

**Sent:** Thursday, December 01, 2011 5:05 PM

**To:** Ludwig, Frederic

**Cc:** Grant, Peter

**Subject:** RE: LRB 3425 - epipen draft

Fred –

With you in MKE, I am not sure if you and Peter have had a chance to discuss the points below yet. But I just wanted to throw in my two cents regarding the waiver of liability language.

The language below would offer protection from liability as a result of nondisclosure of the information. That is probably desired in this case, but that's up to you. In addition, I think the idea was also to give the school protection from liability as a result of a failure to call "911" (perhaps with carve-outs in the event of negligence, etc.).

Brian T. Larson

Staff Attorney

Wisconsin Legislative Council

1/9/2012

(608) 266-0680

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**From:** Grant, Peter  
**Sent:** Thursday, December 01, 2011 11:26 AM  
**To:** Ludwig, Frederic; Larson, Brian  
**Subject:** RE: LRB 3425 - epipen draft

Fred, one more thing that I just realized:

Sec. 118.125 (2) (d) currently requires that pupil records be made available to persons employed by the school district which the pupil attends who are required by DPI to hold a license and to other school officials who have been determined by the school board to have legitimate educational interests, including safety interests, in the pupil records. (I believe that this mimics federal law.) State law goes on to state:

A school board member or an employee of a school district may not be held personally liable for any damages caused by the nondisclosure of any information specified in this paragraph unless the member or employee acted with actual malice in failing to disclose the information. A school district may not be held liable for any damages caused by the nondisclosure of any information specified in this paragraph unless the school district or its agent acted with gross negligence or with reckless, wanton, or intentional misconduct in failing to disclose the information.

Does this satisfy some or all of your concerns, both with respect to making the list available as well as the liability issue?

Peter

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**From:** Ludwig, Frederic  
**Sent:** Thursday, December 01, 2011 10:21 AM  
**To:** Larson, Brian  
**Cc:** Grant, Peter; Ludwig, Frederic  
**Subject:** Re: LRB 3425 - epipen draft

I'm in district in MKE all day today, but feel free to call my cell if there's anything you want/need to discuss.

Sent from my iPhone

On Dec 1, 2011, at 10:14 AM, "Larson, Brian" <[Brian.Larson@legis.wisconsin.gov](mailto:Brian.Larson@legis.wisconsin.gov)> wrote:

Peter – I'll give you a call.

Brian T. Larson  
Staff Attorney  
Wisconsin Legislative Council  
(608) 266-0680

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**From:** Grant, Peter  
**Sent:** Thursday, December 01, 2011 9:56 AM  
**To:** Ludwig, Frederic  
**Cc:** Larson, Brian  
**Subject:** RE: LRB 3425 - epipen draft

1/9/2012

Hi Fred and Brian,  
 Do you know where I can find the requirement to have an emergency plan, mentioned in item 1? Is it in federal law?  
 Thanks -  
 Peter

**From:** Ludwig, Frederic  
**Sent:** Wednesday, November 30, 2011 4:40 PM  
**To:** Grant, Peter  
**Cc:** Larson, Brian  
**Subject:** LRB 3425 - epipen draft

Hi Peter,  
 First off, thanks for getting this draft together. Sandy is greatly appreciative.  
 That being said, we've had a little more time to chew on some additional issues and wanted to run them by you for a /2.

1. Under SB 204, any student who carries an epipen at school must provide the school with a copy of written approval from their physician and/or parent/guardian. Sandy wants to build upon this and include a provision which would require the school to readily maintain a list of these students (just that they have an epipen on premises – no further medical information), as well as providing a student's emergency plan to any school personnel who interact with students carrying epipens. This would be on a need-to-know basis with staff who have been "ok'd" on a student's consent form. We shot the idea around to some school nurses, knowing there may be some complexities with HIPAA and FERPA.

It is our understanding that in most cases, students with an epipen must have an emergency plan that is developed with a guardian and medical provider. On the emergency plan, there is typically a place for the parent signature, as well as an area that indicated whom the plan may be distributed to (i.e. consent form within the plan). Copies of the plan are given to those individuals, along with instruction for administration of the epipen (skill sheet, epipen trainer, agreement to delegation form, etc.).

Sandy would like to find a way to incorporate these basic principles as a (1v)(c)

1. After discussing with Leg Council (Brian Larson, who I've included on the email), we thought it would be worth attaching liability waiver language under 1(v). We thought current s. 118.29 (3) would work best, which reads:

"Subject to sub. (4m), is immune from civil liability for his or her acts or omissions in administering a nonprescription drug product or prescription drug to a pupil under subd. 1., 2., 2m., or 2r. unless the act is in violation of sub. (6) or the act or omission constitutes a high degree of negligence. This subdivision does not apply to health care professionals." However, Brian thought that simply adding "1(v)" to the list under 118.29(3) will not work, and that some verbiage like "...under subd. 1, 2., 2m., or 2r, or in meeting its obligations under 1(v), unless the act..." would need to be added as well.

I hope these points somewhat make sense, but let me know if you'd like any clarification/would like to discuss further. If needed, I know Brian would be more than happy to join the conversation as well.

Thanks,  
 Fred

--

**Fred Ludwig**  
**Office of State Representative Sandy Pasch**  
 608.266.7671 o  
 888.534.0022 tf  
 608.282.3622 f

1/17/12

Suggested to Fred & Brian the  
standards under 118.29, re alternative  
profits & inhalers -

both agreed it was the best choice -



State of Wisconsin  
2011 - 2012 LEGISLATURE



LRB-34252  
PG:med&kjf:jm

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2011 BILL

Reger

- 1 AN ACT ~~to create~~ 118.292 (1v) of the statutes; **relating to:** a pupil's possession  
2 and use of an epinephrine auto-injector.

***Analysis by the Legislative Reference Bureau***

Under current law, a pupil may possess and use an epinephrine auto-injector while in a public, private, or tribal school, at a school-sponsored activity, or under the supervision of a school authority if the pupil uses the injector to prevent the onset or alleviate the symptoms of an emergency situation. An emergency situation is a situation in which a pupil reasonably believes that he or she is experiencing a severe allergic reaction, including anaphylaxis, that requires the administration of epinephrine to avoid severe injury or death.

The pupil must obtain the written approval of the pupil's physician and, if the pupil is a minor, the written approval of the pupil's parent or guardian, and must provide the school principal with a copy of the approval or approvals.

This bill requires the governing body of each school to adopt a written policy describing the procedure for a pupil's possession and use of an epinephrine auto-injector. The policy must require that school employees do the following:

1. Inform the pupil that if he or she uses an epinephrine auto-injector, he or she must notify a school employee as soon as possible.
2. If the pupil notifies a school employee, report the pupil's use of the epinephrine auto-injector by dialing "911."

The bill also exempts school boards and districts, private schools, and tribal schools, and their employees, from civil liability for an injury incurred by any person as a result of ~~performing or failing to perform any act described above unless the act~~

~~satisfy either~~  
a school employee failing to satisfy either of these requirements if the school employee had a good faith belief that the requirement had been satisfied.



**BILL**

*constitutes a high degree of negligence*  
or failure was done with actual malice or constituted gross negligence or reckless, wanton, or intentional misconduct.

***The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:***

**SECTION 1.** 118.292 (1v) of the statutes is created to read:

118.292 (1v) The governing body of each school shall adopt a written policy describing the procedure for a pupil's possession and use of an epinephrine auto-injector under sub. (1r). The policy shall require school employees to do all of the following:

(a) Inform the pupil that if he or she uses the epinephrine auto-injector, he or she must notify a school employee as soon as possible.

(b) If the pupil notifies a school employee under par. (a), report the pupil's use of the epinephrine auto-injector by dialing the telephone number "911" or, in an area in which the telephone number "911" is not available, the telephone number for an emergency medical service provider.

**SECTION 2.** 118.292 (2) (c) of the statutes is created to read:

118.292 (2) (c) Any person as a result of ~~an act or omission under sub. (1v)~~  
~~unless the act or omission was done with actual malice or constituted gross~~  
~~negligence or reckless, wanton, or intentional misconduct.~~

(END)

2-15

(2-15)

a school employee failing to inform  
a pupil under sub. (iv)(a) or failing  
to report a pupil's use of an  
epinephrine auto-injector under sub.  
(iv)(b) if the school employee had a  
good faith belief that the requirement  
under sub. (iv)(a) or (b) has  
been satisfied.

**Godwin, Gigi**

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**From:** Rep.Pasch

**Sent:** Friday, January 27, 2012 9:35 AM

**To:** LRB.Legal

**Subject:** Draft Review: LRB 11-3425/3 Topic: Written policies on use of epinephrine auto-injectors by pupils

Please Jacket LRB 11-3425/3 for the ASSEMBLY.

1/27/2012